

Senate File 335 - Introduced

SENATE FILE 335

BY HOGG

A BILL FOR

1 An Act relating to the consumer credit code and actions by a
2 creditor against a consumer arising from a consumer credit
3 transaction.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 537.5114, Code 2011, is amended to read
2 as follows:

3 **537.5114 Complaint — proof — default judgment.**

4 1. In an action brought by a creditor against a consumer
5 arising from a consumer credit transaction, the complaint shall
6 allege the facts of the consumer's default, the amount to which
7 the creditor is entitled, and an indication of how that amount
8 was determined.

9 2. ~~No~~ Except as provided in subsection 3, a default judgment
10 shall not be entered in the action in favor of the creditor
11 unless the complaint is verified by the creditor, or unless
12 sworn testimony, by affidavit or otherwise, is adduced showing
13 that the creditor is entitled to the relief demanded.

14 3. a. In an action based on an express or implied promise
15 to pay a definite sum and claiming only liquidated damages
16 which may include interest and reasonable attorney fees, if
17 the consumer has not filed an answer by the answer date, the
18 court shall render judgment in favor of the creditor without
19 requiring the presence of the creditor or the creditor's
20 representative before the court, provided the creditor has
21 complied with the provisions of this section.

22 b. In order for the court to render any judgment pursuant to
23 this section at the time set for entering a judgment whether
24 by default, stipulation, or other method, an affidavit of
25 debt signed by the creditor or the creditor's representative
26 who is not the creditor's attorney, as well as any supporting
27 documentation, must have been filed by the creditor.

28 (1) If the instrument on which the contract is based is
29 a negotiable instrument or assigned contract, the affidavit
30 shall state that the instrument or contract is now owned by
31 the creditor and a copy of the executed instrument shall be
32 attached to the affidavit. If the creditor is not the original
33 party with whom the instrument or contract was made, the
34 creditor shall do one of the following:

35 (a) Attach all bills of sale back to the original creditor

1 and swear to its purchase of the debt from the last owner in its
2 affidavit of debt while also referencing the attached chain of
3 title in the affidavit of debt.

4 (b) In the affidavit of debt, recite the names of all prior
5 owners of the debt with the date of each prior sale, and also
6 include the most recent bill of sale from the creditor's seller
7 and swear to its purchase of the debt from its seller in the
8 affidavit of debt.

9 (2) The affidavit shall state the basis upon which the
10 creditor claims the statute of limitations has not expired.

11 (3) If the creditor has claimed any lawful fees or charges
12 based on a provision of the contract, including reasonable
13 attorney fees, the creditor shall attach to the affidavit of
14 debt a copy of a portion of the contract containing the terms
15 of the contract providing for such fees or charges and the
16 amount claimed.

17 (4) If a claim for attorney fees is made, the creditor shall
18 include in the affidavit the reasons for the specific amount
19 requested. Any claim for reasonable attorney fees shall be
20 referred to the court for approval prior to its inclusion in
21 any default judgment.

22 (5) If the basis for the claim is a credit card account,
23 the creditor shall include the final statement which supports
24 the balance demanded and if the statement does not support
25 the balance demanded, the creditor shall provide a statement
26 explaining in sufficient detail why the statement is not
27 available or why the balance differs.

28 c. This subsection is intended to supersede all previous
29 case law on the requirements for a default judgment to
30 the extent of any conflict between the provisions of this
31 subsection and the provisions of any other law.

32 EXPLANATION

33 This bill relates to the consumer credit code and actions by
34 a creditor against a consumer arising from a consumer credit
35 transaction.

1 The bill provides that in an action based on an express
2 or implied promise to pay a definite sum and claiming only
3 liquidated damages which may include interest and reasonable
4 attorney fees, if a consumer has not filed an answer by the
5 answer date, the court shall render judgment in favor of the
6 creditor without requiring the presence of the creditor or
7 the creditor's representative before the court, provided the
8 creditor has complied with the provisions of the bill which
9 require the creditor to provide a signed affidavit of debt as
10 well as any supporting documentation.

11 The bill provides that if the instrument on which the
12 contract is based is a negotiable instrument or assigned
13 contract, the affidavit shall state that the instrument
14 or contract is now owned by the creditor and a copy of the
15 executed instrument shall be attached to the affidavit. If the
16 creditor is not the original party with whom the instrument or
17 contract was made, the creditor shall either attach all bills
18 of sale back to the original creditor and swear to its purchase
19 of the debt from the last owner in its affidavit of debt while
20 also referencing the attached chain of title in the affidavit
21 of debt or, in the affidavit of debt, recite the names of all
22 prior owners of the debt with the date of each prior sale, and
23 also include the most recent bill of sale from the creditor's
24 seller and swear to its purchase of the debt from its seller in
25 the affidavit of debt.

26 The affidavit shall also state the basis upon which the
27 creditor claims the statute of limitations has not expired,
28 and include a copy of a portion of the contract containing the
29 terms of the contract providing for attorney fees or charges
30 and the amount claimed as well as the reasons for the specific
31 amount requested, if applicable.

32 The bill provides if the basis for the claim is a credit card
33 account, the creditor shall also include the final statement
34 which supports the balance demanded and if the statement does
35 not support the balance demanded, the creditor shall provide a

1 statement explaining in sufficient detail why the statement is
2 not available or why the balance differs.

3 The bill provides that the bill is intended to supersede all
4 previous case law on the requirements for a default judgment to
5 the extent of any conflict between the provisions of the bill
6 and the provisions of any other law.